IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

Civil Miscellaneous Appeal (NPD) Nos.2440, 2441, 2442, 3271 & 3272 of 2003 & 235 & 236 of 2004
&
Civil Revision Petition (NPD) Nos.1337 & 1338 of 2003 & 125, 126, 164, 165 & 166 of 2004
&
CMP.Nos.20995 & 20996/2003 & 10110/2006

The National Insurance Co. Ltd.,
Chennai. .. Appellant in all appeals & petitioner in all revisions.

vs.

K. Ellammal .. R1 in CMA.No.2440/03

S. Ravi .. R1 in CMA.No.2441/03

N. Jeya .. R1 in CMA.No.2442/03

S. Rani .. R1 in CMA.No.3271/03

D. Ranganathan .. R1 in CMA.No.3272/03

N. Lakshmi .. R1 in CMA.No.235/04

P. Murthy .. R1 in CMA.No.236/04

S. Arumugam .. R1 in CRP.No.1337/03

L.Mary .. R1 in CRP.No.1338/03

G. Lakshmi .. R1 in CRP.No.125/04

R. Kesavammal .. R1 in CRP.No.126/04

M. Devan .. R1 in CRP.No.164/04

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Srinivasan .. R1 in CRP.No.165/04

N. Veerasamy .. R1 in CRP.No.166/04

Santhi .. R2 in all matters

Appeals filed u/s 173 MV Act 1988 and Revision Petitions filed under Art 227 of the Constitution of India against the common order and decree dated 15.4.2002 made in M.C.O.P.Nos.3087, 3274, 3091, 3291, 4396, 3535, 3914, 3093, 3089, 3088, 3092, 3090, 3534 and 3536 of 1998 on the file of Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

For Appellant & Petitioner in C.M.As & CRPs : Mr. S. Arunkumar

For Respondents : Ms. Fathima for M/s. A.A.Venkatesan-R1 in all CMAs & CRPs
No appearance for R-2

COMMON JUDGMENT

The above appeals are directed against the common order dated 15.4.2002 made in M.C.O.P.Nos.3087, 3274, 3091, 3291, 4396, 3535, 3914, 3093, 3089, 3088, 3092, 3090, 3534 and 3536 of 1998 on the file of Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

2. Brief facts leading to the filing of these appeals are that on 10.2.1998 at 7.30 a.m. while the first respondent/claimant in all these matters were travelling in a mini lorry bearing Registration No. TN-04-Z-7117 along with their goods from Koyambedu Market to Ponneri, the driver of the said lorry driven it in a very rash and negligent manner. As a result, the lorry capsized, all of them fell down and sustained grievous injuries. They had filed claim petitions seeking compensation from the owner of the said mini lorry and the insurance company. The Tribunal held that as the driver of the said mini lorry applied sudden brake, the accident took place and the lorry capsized, as a result of which, the claimants sustained grievous injuries, that the driver alone is responsible for the accident and that the insurance company alone is liable to pay compensation awarded to the claimants. Challenging the award passed by the Tribunal, the insurance company has preferred the above appeals.

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3. The only ground raised by the learned counsel appearing for the appellant/insurance company is that the owner of the vehicle viz., the second respondent has violated permit and policy conditions by carrying fifteen persons in addition to driver at the time of accident and hence it is not liable to pay compensation.

4. It is not in dispute that the claimants are all gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into nor was any premium paid to the extent of the benefit of insurance to such category of people.

5. The issue involved in these appeals has already been covered in the decision of the Apex Court in National Insurance Co. Ltd. vs. Baljit Kaur, reported in 2004 (1) CTC 210, wherein it is held as follows:

> "The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect...
>
> We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer"

6. Following the decision of the Apex Court, a Division bench of this Court in United India Insurance Co. Ltd. v. P. Jaya, reported in 2006 (1) CTC 173, held that the appellant Insurance Company is liable to pay the compensation amount to the claimants as awarded by the Tribunal and to recover the same from the owner in execution proceedings, without filing any suit therefor.

7. In view of the decisions cited supra, the appellant Insurance Company is directed to pay the compensation amount first to the claimants as awarded by the Tribunal and thereafter, to recover the same from the owner in execution proceedings, without filing any suit therefor.

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With the above modification, the appeals and the revisions are disposed of. No costs. Consequently, CMP.Nos.20995 & 20996/2003 & 10110/2006 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ATR

To

1.The VI Judge, Court of Small Causes,
Chennai

2. The Registrar,
Court of Small Causes,
Chennai.

3. The Section Officer,
VR Section, High Court, Madras.

14 ccs to Mr.S. Arunkumar, SR. 10923 to 10936
14 ccs to Mr.A.A. Venkatesan, Sr. 10603 to 10616

CMA(NPD)Nos.2440, 2441, 2442, 3271
& 3272 of 2003 & 235 & 236 of 2004&
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125, 126, 164, 165 & 166 of 2004

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